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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.No.49 of 2004

Commissioner of Income Tax
Trichy.

.. Appellant

Vs

M/s.Balaji Traders.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 12.6.2002 in ITA.No.1347/Mds/1995. Against the order of Commissioner of Income Tax (Appeals) VI Madras - 34 dated 8295 in IT/WT/GT/APPEAL NO. 470/94-95 TRY; against the proceedings of the Deputy Commissioner of Income Tax Tiruchirappalli dated 19.07.1994 in C NO. 10(8) 94-95)

For Appellant : Mr.J.Nareshkumar,
Jr.Standing Counsel (IT)

For respondent : Mr.N.Quadri Hoseyn

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JUDGMENT

(Delivered by P.D.DINAKARAN, J.)

At the instance of the Revenue, the appeal is directed against the order of the Income-tax Appellate Tribunal dated 12.6.2002 in ITA.No.1347/Mds/1995, raising the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that no penalty is leviable under section 271-D when there has been repeated violations of section 269 SS on the ground that the creditors are genuine persons and there was



no revenue loss to the Exchequer?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that no penalty is leviable under section 271-D, on the ground that taking a loan in cash for depositing into the assessee's bank to make necessary arrangements for honouring cheques is a reasonable cause for violating the provisions of section 269 SS of the Income-tax Act?

2.1. The respondent assessee filed its return for the assessment year 1993-94 showing a total income of Rs.11,710/- which was initially taken up for assessment under section 143(1) (a) of the Income-tax Act, 1961 (in short 'the Act'). When the assessment was taken up for scrutiny, it was found that the assessee had availed cash borrowings exceeding Rs.20,000/- for about 36 times in the course of the year attracting section 269-SS of the Act which contemplates that all borrowings exceeding Rs.20,000/- should only be in the form of cheque or demand draft.

2.2. Accordingly, notice under section 271-D of the Act was issued to the assessee for imposing penalty. In response to the notice, the assessee filed a detailed explanation dated 22.5.1994 stating that the cash borrowings were for urgent necessity to pay to master weavers most of whom were living in rural and sub-urban areas where banking facility was very much less and that most of the loans had been utilised for making payments to bank accounts to honour its cheque commitment to financial corporations who were also income-tax assesseees and interest income was admitted by them in their accounts. It is contended that all the transactions were made out of business exigency and therefore, they are bona fide and reasonable. However, the assessing officer refused to accept the above explanation and levied penalty to the tune of Rs.12,30,000/-, by order dated 19.7.1994.

2.3. Aggrieved by the order of assessing officer imposing penalty, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who, by order dated 8.2.1995, even though observed that the assessee could have obtained loans by cheques or demand drafts in its favour and deposited the same in current account, rendered a finding that loans were taken mostly to make payments to master weavers living in village and suburban areas where banking facility was very much less and that loans were taken to meet the immediate business need and hence, there existed reasonable cause. However, the Commissioner of Income-tax (Appeals) directed the assessing officer to levy penalty on certain transactions to the tune of Rs.4,30,000/-.



2.4. On further appeal by the assessee, the Appellate Tribunal, by the impugned order dated 12.6.2002, in clear terms, rendered a finding that obtaining loans and making repayments into bank account are not denied by the Revenue and the genuineness of the transactions are not doubted either by the assessing officer or by the Commissioner of Income-tax (Appeals). The Appellate Tribunal also found that the identity of the debtors is not disputed and all the credits were from established parties and the loans were genuine as agreed by the Commissioner of Income-tax (Appeals). In the said order, the Appellate Tribunal held as under:

"... the assessee while carrying out their business issued cheques to various parties and the same to be honoured on the relevant dates. If the commitment is not honoured the assessee is bound to lose its credibility in the market. Therefore, the assessee had to make necessary arrangements for honouring the cheques issued by them. In this context of the business exigency, the assessee was forced to take cash loans for the purpose of depositing them into the bank account of the assessee for honouring the commitment, namely, issuance of cheque for a particular date. This cannot be said to be unreasonable. The purpose of section 269SS is to prevent tax evasion. This has been brought to the notice of the Commissioners by Circular No.551 dated 23.1.1990 reported in 183 Statute 67. In the present case, the assessee had consciously made the TDS. The creditors are genuine persons and the transactions were never doubted by the authorities below. There was no revenue loss to the State exchequer. Considering all these factual position, we are unable to accept the conclusion drawn by the authorities below. For all these reasons and discussions and considering the facts and materials, we cancel the levy of penalty sustained by the CIT (Appeals). It is ordered accordingly."

3.1. Assailing the said order of the Appellate Tribunal, Mr.Nareshkumar, learned counsel appearing for the Revenue contends that section 269-SS is intended to prevent evasion of tax by cash transactions involving more than Rs.20,000/-. According to him, since there are 36 transactions attracting section 269-SS, the same cannot be construed as bona fide and reasonable. It is further contended that the business exigency for cash transactions would arise in one or two transactions subject to the provisos to section 269-SS of the Act which read as follows:



" 269SS. Mode of taking or accepting certain loans and deposits.--No person shall after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,--

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,--

- (a) Government ;
- (b) any banking company, post office savings bank or co-operative bank ;
- (c) any corporation established by a Central, State or Provincial Act ;
- (d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and that person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act."

(Emphasis supplied)



3.2. Since the transactions are not protected by the provisos to section 269-SS of the Act, it is contended by the learned counsel appearing for the Revenue that the Revenue is justified in imposing penalty under section 271-D of the Act, which reads thus:

"271-D. Penalty for failure to comply with the provisions of section 269SS.--(1) If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner".

4. Per contra, learned counsel appearing for the assessee, referring to two decisions of this Court in (i) CIT v. Kundrathur Finance and Chit Co. (283 ITR 329) and (ii) CIT v. Ratna Agencies (284 ITR 609), contends that if the Appellate Tribunal is satisfied that the transactions are genuine and bona fide, penalty could not be imposed under section 271-D of the Act, particularly when the amounts are found reflected in the assessment of respective parties/creditors and hence, there is no evasion of tax. He further contends that once the authorities below arrived at a finding that when the transactions were made on account of business exigencies and the Tribunal was also satisfied that the transactions were satisfactorily explained as to reasonable cause, there is no substantial question of law that arises in this matter, as whether a particular transaction is genuine and bona fide is purely a question of fact.

5. We have given our careful consideration to the submissions made on either side.

6. This Court in CIT v. Kundrathur Finance and Chit Co. (283 ITR 329), following the decision of Apex Court in Asst. Director of Inspection (Investigation) v. Kum.A.B.Shanthi (255 ITR 258), held that if there was genuine and bona fide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.



7. In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal found that (i) there was business exigency forcing the assessee to take cash loans for the purpose of honouring the commitment, viz., issuance of cheque on a particular date; (ii) the creditors were genuine persons and the transactions were never doubted by the authorities below; and (iii) there was no revenue loss to the State exchequer, and satisfied that the assessee has shown reasonable cause for the above transactions.

8. The authorities have also noticed that all the transactions were brought into account of the assessee and there were corresponding entries in the books of account of respective parties/creditors which satisfied the test of business exigency.

9. Once the said finding is arrived at by the Tribunal on facts, as held by the Delhi High Court in Commissioner of Income-tax (Appeals) v. Parma Nand (266 ITR 255), which was followed by this Court in CIT v. Ratna Agencies (284 ITR 609) that the finding recorded by the Tribunal as to the reasonable cause is essentially a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this Court to interfere with such a finding of fact.

For all these reasons, answering the questions of law referred to us against the Revenue, the appeal stands dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar



To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "C", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax
(Appeals VI), Madras.
4. The Deputy Commissioner of Income-tax,
Tiruchirappalli.
5. The Assistant Registrar
Income Tax Appellate Tribunal
Madras Benches

+ one cc to Mr. N. Muralikumaran, Advocate sr no. 63471

TS(CO)

NM(10.01.07)

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